

AMENDED IN ASSEMBLY AUGUST 7, 2006
AMENDED IN ASSEMBLY JUNE 15, 2006
AMENDED IN ASSEMBLY MARCH 13, 2006
AMENDED IN ASSEMBLY JUNE 22, 2005
AMENDED IN SENATE MAY 27, 2005
AMENDED IN SENATE APRIL 18, 2005

SENATE BILL

No. 354

Introduced by Senator Escutia

February 16, 2005

An act to amend Section 25401.1 of the Health and Safety Code, relating to hazardous substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 354, as amended, Escutia. Hazardous materials release: remediation.

Existing law, the California Land Environmental Restoration and Reuse Act (CLERRA), specifies a procedure for the selection of an oversight agency for a property subject to a phase I environmental assessment by representatives of the Department of Toxic Substances Control (department) and the State Water Resources Control Board. The act authorizes a local agency to issue a notice requiring the owner or operator to conduct a phase I environmental assessment of certain property, in response to the release or the threat of a release of a hazardous material and to protect human health and the environment, as specified. The act also authorizes the local agency to require the owner or operator to prepare a preliminary endangerment assessment

under specified conditions and require or initiate an investigation and remedial action. The act defines the term “property” as meaning real property, but excludes from that definition, among other things, a site that is or becomes subject to a specified enforcement action or order issued by a California regional water quality control board (regional board) or a specified enforcement action by the department; a site that is or becomes subject to a corrective action requirement or for which a no-further-action determination has been issued by a regional board or a local oversight program as specified, unless a specified finding is made; a site that is or becomes subject to a corrective action order issued as specified; and a site that is or becomes authorized or permitted as specified for the treatment, storage, or disposal of hazardous waste.

This bill would delete those exclusions from the definition of “property” “property” in the act, and would thus include in the act, as “property,” a site that is described in one of those exclusions. The bill also would correct an erroneous cross-reference.

The bill also would correct the definition of “environmental assessor” in the act to mean, among others, a class II environmental assessor registered by the Department of Toxic Substances Control instead of the Office of Environmental Health Hazard Assessment.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 25401.1 of the Health and Safety Code
- 2 is amended to read:
- 3 25401.1. For purposes of this chapter, the following terms
- 4 have the following meanings:
- 5 (a) “Department” means the Department of Toxic Substances
- 6 Control.
- 7 (b) “Hazardous material” means a substance or waste that
- 8 because of its physical, chemical, or other characteristics may
- 9 pose a risk of endangering human health or safety or of
- 10 degrading the environment. “Hazardous material” includes, but is
- 11 not limited to, all of the following:
- 12 (1) A hazardous substance, as defined in Section 25281 or
- 13 25316.
- 14 (2) A hazardous waste, as defined in Section 25117.

1 (3) A waste, as defined in Section 13050 of the Water Code or
2 as defined in paragraph (2) of subdivision (b) of Section 101075.

3 (c) “Local agency” means the local department, office, or
4 other agency of a city or county designated pursuant to
5 subdivision (a) of Section 25401.2.

6 (d) “Oversight agency” means the department or the regional
7 board, as appropriate, that oversees a site investigation and
8 remedial action pursuant to this chapter.

9 (e) “Person” means an individual, trust, firm, joint stock
10 company, business concern, partnership, limited liability
11 company, association, or corporation, including, but not limited
12 to, a government corporation. “Person” also includes a city,
13 county, city and county, district, commission, or the state, or a
14 department, agency, or political subdivision thereof, an interstate
15 body, and the United States and its agencies and instrumentalities
16 to the extent permitted by law.

17 (f) “Phase I environmental assessment” means a preliminary
18 assessment of a property to determine whether there has been, or
19 may have been, a release of hazardous material on or near the
20 property, based on reasonably available information about the
21 property and the area in its vicinity. A phase I environmental
22 assessment may include, but is not limited to, a review of public
23 and private records of current and historical land uses, historical
24 aerial photographs of the property and the area in its vicinity,
25 relevant files of federal, state, and local agencies, regulatory
26 correspondence, records of prior releases of hazardous materials
27 and environmental reports, database searches, visual and other
28 surveys of the property, and interviews with available current and
29 previous owners and operators of the property. A phase I
30 environmental assessment does not require sampling or testing
31 on or around a property.

32 (g) “Preliminary endangerment assessment” means an activity
33 that is performed to determine whether current or past hazardous
34 material management practices or waste management practices
35 have resulted in a release or threatened release of hazardous
36 materials that pose a threat to public health or the environment. A
37 preliminary endangerment assessment shall be conducted in a
38 manner that complies with the guidelines published by the
39 department entitled “Preliminary Endangerment Assessment:
40 Guidance Manual,” and that evaluates whether a hazardous

1 material has been discharged, threatens to discharge, or is
2 discharging, to waters of the state. A preliminary endangerment
3 assessment requires sampling and analysis of a property, a
4 preliminary determination of the type and extent of hazardous
5 materials release or threatened release on contamination of the
6 property, and a preliminary evaluation of the risks that hazardous
7 materials contamination of the property may pose to public
8 health or the environment, including waters of the state.

9 (h) (1) “Property” means real property, as defined in Section
10 658 of the Civil Code.

11 (2) “Property” does not include any of the following:

12 (A) A site listed on the National Priorities List pursuant to the
13 Comprehensive Environmental Response, Compensation, and
14 Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.) or proposed
15 for, and ranked as, qualifying for this list.

16 (B) A site on the list maintained by the department pursuant to
17 Section 25356.

18 (C) An active or former federal military base or property that
19 is or was owned by a department, agency, or instrumentality of
20 the United States.

21 (D) A property for which a no-further-action determination
22 has been issued by the department or a regional board, under
23 applicable statutes or regulations.

24 (E) A site that is, or becomes, subject to a response or cleanup
25 operation under Chapter 7.4 (commencing with Section 8670.1)
26 of Division 1 of Title 2 of the Government Code.

27 (F) A site that is, or becomes, subject to an order for corrective
28 action issued pursuant to Part 5 (commencing with Section
29 45000) of Division 30 of the Public Resources Code.

30 (G) A site located within a redevelopment area established
31 pursuant to Division 24 (commencing with Section 33000).

32 (H) A site that is larger than five acres of contiguous property
33 under the same ownership, unless the site is an infill site, as
34 defined in Section 21061.3 of the Public Resources Code.

35 (i) For purposes of this subparagraph, a “qualified urban use,”
36 as defined in Section 21072 of the Public Resources Code,
37 includes an industrial use.

38 (ii) For purposes of this subparagraph, a parcel is adjoining or
39 immediately adjacent to the site, as required by subdivision (a) of

1 Section 21061.3 of the Public Resources Code, if the parcel is
2 separated from the site only by an improved public right-of-way.

3 (I) A site that is owned by a state or local public agency.

4 (J) A site that is being used for productive agriculture.

5 (K) A site for which the owner or operator, within 60 days
6 following receipt of a notice from a local agency issued pursuant
7 to Section 25401.3 or 25401.4, enters into a voluntary agreement
8 with an oversight agency to commence and complete a site
9 investigation and remediation of the property under that
10 oversight agency's oversight and jurisdiction.

11 (L) A site for which the owner or operator, within 60 days
12 following receipt of a notice from a local agency issued pursuant
13 to Section 25401.3 or 25401.4, requests the designation of an
14 administering agency to oversee a site investigation and remedial
15 action at the site pursuant to Chapter 6.65 (commencing with
16 Section 25260).

17 (M) Property that is the subject of continuous expansion or
18 improvement, and is owned or operated by an operating
19 industrial or commercial activity.

20 (N) Residential property with an owner-occupied dwelling.

21 (O) Property occupied by a family-owned business that has no
22 employees other than members of the family or a business that
23 has no employees other than the owners.

24 (P) Property that is dedicated to a public use by a public
25 utility, as provided in Section 1007 of the Civil Code.

26 (Q) Property acquired, to be acquired or proposed for use as a
27 schoolsite, prior to its occupancy for a school, if a school district
28 has entered into an enforceable environmental oversight
29 agreement with the department to conduct a preliminary
30 endangerment assessment or other response action at the property
31 pursuant to Section 17213.1 of the Education Code. The
32 exclusion provided in this subparagraph shall not apply if the
33 school district determines, after entering into that agreement, not
34 to pursue the use of the site as a school, or if the agreement
35 between the department and the school district is terminated or
36 expires.

37 (i) (1) "Qualified person" means one of the following:

38 (A) For activities conducted under Section 25401.6, an
39 environmental assessor, as defined in paragraph (2).

1 (B) For activities conducted under Section 25401.7, an
2 environmental assessor, as defined in paragraph (2), who also has
3 demonstrated expertise in hazardous materials site investigation
4 and cleanup.

5 (2) “Environmental assessor” means a class II environmental
6 assessor registered by the ~~Office of Environmental Health~~
7 ~~Hazard Assessment~~ *department* pursuant to Chapter 6.98
8 (commencing with Section 25570), a professional engineer
9 registered in this state, a geologist registered in this state, a
10 certified engineering geologist registered in this state, or a
11 licensed hazardous substance contractor certified pursuant to
12 Chapter 9 (commencing with Section 7000) of Division 3 of the
13 Business and Professions Code. A licensed hazardous substance
14 contractor shall hold the equivalent of a degree from an
15 accredited public or private college or university or from a
16 private postsecondary educational institution approved by the
17 Bureau for Private Postsecondary and Vocational Education with
18 at least 60 units in environmental, biological, chemical, physical,
19 or soil science, engineering geology, or environmental or public
20 health, or a directly related science field. In addition, a person
21 who conducts a phase I environmental assessment shall have at
22 least two years of experience in the preparation of those
23 assessments and a person who conducts a preliminary
24 endangerment assessment shall have at least three years of
25 experience in conducting those assessments.

26 (j) “Reasonably foreseeable uses” means land uses that are
27 authorized under the applicable general plan and zoning code,
28 and any additional uses that are identified by the local land use
29 agency as reasonably foreseeable uses for a property at the time
30 the preliminary endangerment assessment for that property is
31 being prepared pursuant to Section 25401.4 or 25401.6.

32 (k) “Remedial action” means a remedial action, as defined in
33 subdivision (g) of Section 25260.

34 (l) “Remediation plan” means a proposal to complete a site
35 investigation and a remedial action on a property, a schedule for
36 the conduct of that site investigation and remedial action, the
37 method for the oversight of those actions, and the state and local
38 laws, ordinances, regulations, and standards that are applicable to
39 those actions, for approval by the oversight agency pursuant to
40 Section 25401.5 or 25401.7.

1 (m) “Regional board” means a California regional water
2 quality control board.

3 (n) “Release” has the same meaning as defined in Section
4 25320, but with respect to a hazardous material.

5 (o) “Responsible party” means a “responsible party” or “liable
6 person” as defined in subdivision (a) of Section 25323.5, or a
7 person subject to an order pursuant to subdivision (a) of Section
8 13304 of the Water Code.

9 (p) “Site investigation” has the same meaning as defined in
10 Section 25260.

11 (q) “Written determination of completion” means a document
12 issued by the oversight agency that certifies that a remedial
13 action carried out pursuant to this chapter has been satisfactorily
14 completed, in accordance with an approved remediation plan,
15 that applicable remedial action standards and objectives have
16 been achieved, that financial assurance for all operation and
17 maintenance activities, if applicable, has been obtained, and that
18 the property for which the written determination of completion is
19 issued does not pose a significant risk to human health or the
20 environment, does not impact the beneficial uses of waters of the
21 state, and is in a condition that allows it permanently to be used
22 for its reasonably foreseeable uses without any significant risk to
23 human health or any significant potential for future
24 environmental damage. The written determination of completion
25 shall also specifically describe any conditions, restrictions, or
26 limitations imposed on the site, including financial assurance, if
27 applicable, and any land use controls placed on the property. The
28 written determination of completion shall specifically identify the
29 locations where the remediation plan that formed the basis of the
30 determination is kept on file by the oversight agency and the
31 local agency. These files shall be made available to the public
32 upon request.